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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 473

JOHN D. PENNEKAMP and THE MIAMI HERALD PUBLISHING COMPANY;

PETITIONERS,

vs.

THE STATE OF FLORIDA,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR RESPONDENT

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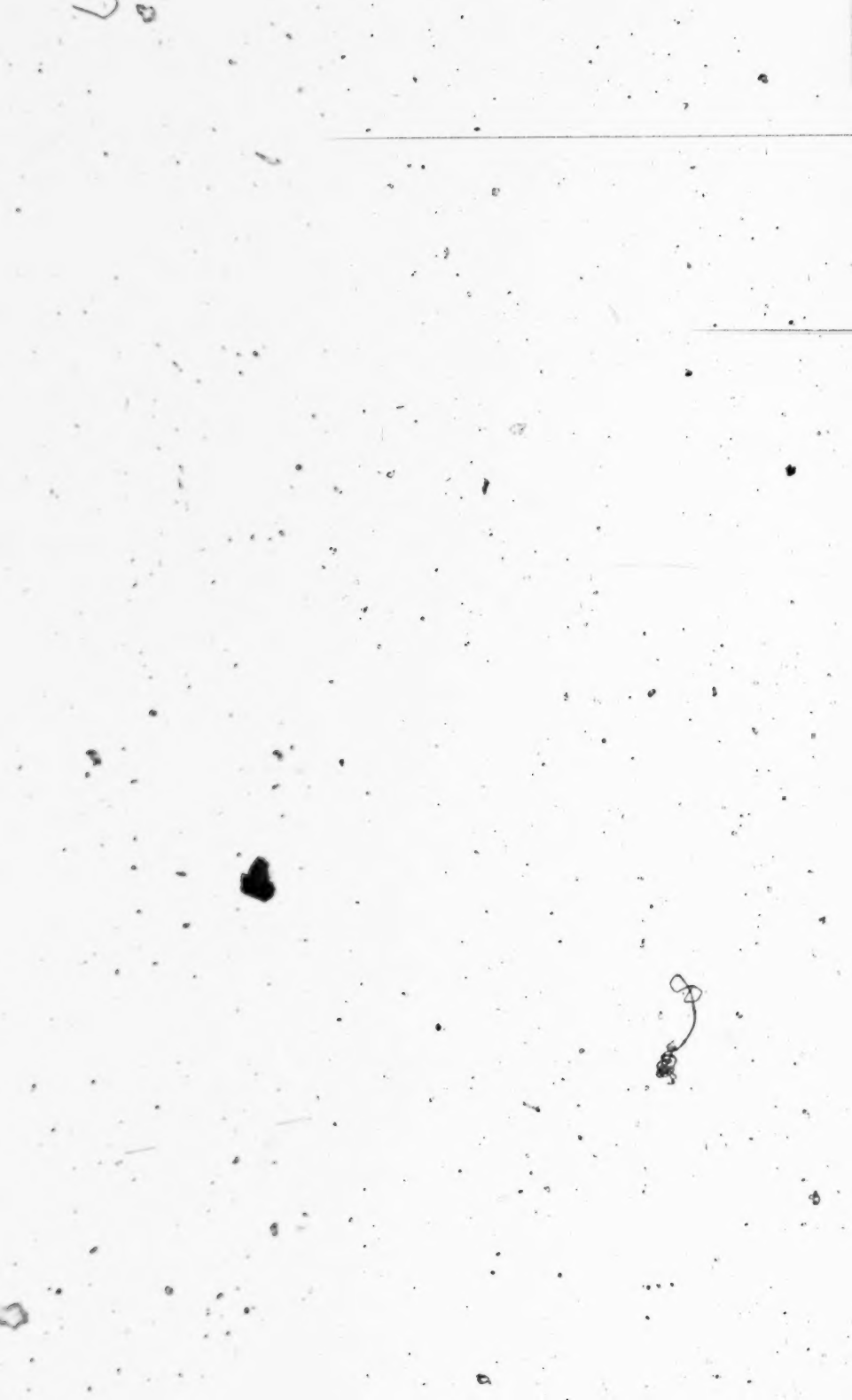

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CORRECTIONS

The attorneys for the petitioners have, on page 2 of their brief, (although not required by Rule 27 of the United States Supreme Court to do so) attempted to state their opinion of the question presented.

It seems to us an unfair statement of the question.

We think there are two questions:

(1) May a state provide its own method of punishment for contempts of its own courts where such contempts present "a clear and present danger to an institution which the state is entitled to protect", to-wit: the courts of that state?

(2) Turning to the particular utterances (and cartoon) here in question and the circumstances of their publica-

tion, to what extent was the substantive evil of unfair administration of justice a likely consequence, and was the degree of likelihood sufficient to justify summary punishment?

STATEMENT OF CASE

Only a few mistakes have been discovered in the statement of the case as contained in the brief for the petitioners, most of them perhaps unintentional, but at least one must have been intentional.

It should be noted that before the publication of the editorial and the cartoon complained of, all of the defendants in the rape cases had been reindicted and rearraigned, and that the petitioners then knew that fact (R. 135).

Only one Brook Club case was referred to in the editorial, but now petitioners' counsel undertake to argue two.

In the Tepee Club case petitioners' counsel failed to state that the suit was for a permanent injunction, and that the denial of a temporary injunction in no way precluded the state from offering evidence, or ended the pending case.

With regard to the rape cases, the allegations of the answer to the effect that the State Attorney had said that he believed the indictments to be in proper form is contradicted by sub-section 3 of footnote on page 19 of the brief of petitioners.

The one misstatement of fact which must have been intentional is a reference to the minutes of the Court made for the day the motion to quash was granted. These were nothing but pencil notes, because minutes do not

become the minutes of a trial court until they are formally and finally written up and signed.

The misstatements of facts regarding the second Brook Club case speaks of testimony taken on an application for temporary injunction as if it had been taken after the case "came at issue." All of that part of the brief beginning with the second paragraph on page 10 refers to another Brook Club case, which is afterwards discussed as the second one. But even so, it appears that no testimony in that case was taken after the case came at issue.

The grand jury report is inaccurately stated with regard to felony cases. This part of the report referred only to gambling cases which charged felonies.

On page 21 of the brief it is stated that Mr. Justice Sebring concurred in Mr. Justice Buford's opinion. An examination of the record will show that he only concurred in Mr. Justice Buford's conclusion.

The brief fails to include in its statement of the case the fact that the Circuit Court in and for Dade County did not have jurisdiction of criminal prosecutions in gambling cases, but that such jurisdiction is lodged in the Criminal Court of Record in and for Dade County.

There were five indictments charging eight defendants with rape. All of the indictments were fatally defective, probably on account of the typographical error in writing them up. On October 30th, 1944 one of them was quashed, then, by agreement with the State Attorney, the other indictments with the same defects were quashed, and the next day new indictments supplying the missing words were found against the same defendants.

On November 2nd, 1944 an editorial attacking the

judges and charging them with all sorts of wrongdoing was published. The editorial did not mention the approval or agreement of the Assistant State Attorney to the entry of the orders. The citation recites that this officer agreed to the orders and the findings of fact say that he approved the orders. The affidavit of Henry Jones, recited in Petitioners' brief although not properly therein, says that the Assistant State Attorney did not concede the indictments in the rape cases to be defective, but because the grand jury was still in session and to obviate any question, he would have new indictments returned (Br. 19). Whether that is agreeing or approving, or merely consenting, makes no difference. They were the same defendants in the new indictments as in the old, and the cases against these eight defendants were still pending.

The petitioners attempt to criticize the court for ignoring a small news item printed in The Herald on November 1st to the effect that the new indictments had been filed. All that news item proves is that The Herald knew the whole situation before the editorial of November 2nd was published.

The petitioners herein, in answer to the citation, admitted that the State Attorney's office "merely made the suggestion that new indictments might well be obtained to remove doubt and question."

With regard to the Brook Club case, the answer of the respondents petitioners herein, to the citation and their brief in this court are not in agreement. In the brief, it is said that the State Attorney notified the court that at the time the motion for dismissal was set he would be engaged before a grand jury and requested an extension of time. (Br. 7). In the answer it is said that he notified the

"secretary" to the judge and counsel for the Brook Club of his inability to attend, and requested that the case be deferred. (Tr. 12).

In the statement of facts in the brief for petitioners in this court, they have overlooked the fact that in the decision in this case by the Supreme Court of Florida it was held that all of the decisions in the rape cases were correct, as well as Judge Wiseheart's decision in the Brook Club case and Judge Holt's decision in the Tepee Club case. In fact, it was said by Judge Terrell who wrote this opinion that no other judgment could have been entered in any of the cases except the one which was entered.

In the brief of petitioners, it is said that the publications "annoyed" the judges, but it is not said that both the Circuit Court and the Supreme Court directly held that the statements of fact in the editorial were false or distorted and that, pyramiding deception upon deception, The Herald had drawn unreasonable, unwarranted and false conclusions. A reading of Judge Terrell's opinion will also show that he did not ignore or attempt to set aside the effect of the Bridges case,[1] but the Supreme Court of Florida did hold that under the facts and circumstances in this case there was clear and present danger, and further held that the facts in the Bridges case would have required the acquittal of the respondents in Florida under our law.

SPECIFICATIONS OF ERRORS

On page 22 of the brief for petitioners, five so-called specifications of errors are set out. Number five is the only one which specifies an error. The others are argu-

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[1] Bridges vs. California, 314 U. S. 252.

mentative. Number two, particularly, shows a confusion of thought which the respondents have manifested throughout. The first half of the paragraph seems to say that in the citation there must be an "allegation" of clear and present danger, but the second half says that a conviction could be sustained only upon "proof" of a clear and present danger of high imminence.

ARGUMENT

There is a great deal of quibbling about the meaning of words in this case. The petitioners begin by referring to the matters which formed the basis of the proceeding, that is, the cartoon and the editorial, as something which "annoyed" the judges. The language of the editorial, and the cartoon, speak for themselves and are unambiguous. Of course, if there was nothing except annoyance to the individual judges involved, there would be nothing whatever to the case.

The question, however, is whether the matter complained of, and for the publication of which sentence was passed, presented such a threat that there was a clear and present danger of high imminence to an institution which the state of Florida is entitled to protect. The courts are such an institution. Under the "clear and present danger" doctrine this court has always made that question depend upon the facts and circumstances of each particular case without requiring in indictments, citations or other pleadings an "allegation" of clear and present danger.

The whole attempt on the part of petitioners is one to broaden the meaning of the phrase "freedom of the press," so that its legal effect shall be extended to cover absolute "immunity" of the press from punishment for anything on earth it chooses to publish. If there are to be no facilities for subsequent punishment for anything on earth the press chooses to publish, then we no longer have any law on libel or any law punishing contempts.

The Federal rule, of course, has been, since 1831, that contempts committed outside the presence of the court cannot be punished except upon indictment and trial by

jury, but that has never been the law in Florida and is not now the Florida law.

Section 13 of the Declaration of Rights of the State of Florida, quoted on page 42 of the brief for petitioners, makes the right of freedom of speech and the press subject to the provision that persons enjoying such rights shall be "responsible for the abuse of that right." The same provision, substantially, is found in the Constitution of almost every state in the Union. The Supreme Court of Florida, in its opinion in this case, uses this language:

> "The law in Florida permits the most liberal exercise possible of freedom of the press but holds to account those who abuse it." (22 So. (2d) 886.)

The petitioners, in their brief, claim that the Supreme Court of Florida has undertaken to nullify the decision in the Bridges case. We do not so read that opinion: They said:

> "We think the rule still persists that each case must stand or fall by the facts presented." (22 So. (2d) 884.)

Later, they said:

> "We have examined the editorials and the telegram involved in the Bridges case and we find nothing in them assaulting the integrity of the court. They would not have been contemptuous under the rule in the Hayes case." (22 So. (2d) 884.)

In discussing the Hayes case,[1] they said:

> "No question of pleading is involved and * * the 'clear and present danger cases' relied on by appel-

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[1] In Re Hayes, 72 Fla. 558, 73 So. 362, L.R.A. 1917 D 192; Ann. Cas. 1918 B. 936.

lants are not pertinent, the reason being that each case is determined in the light of its environment, the test being whether the words used will create the substantive evil that Congress and the Legislature have the power to prohibit."

There is no question that the Hayes case was and is the law of Florida, unless the rule in the Bridges case is to be so extended as to deny to the states the right to choose their own method of punishing publications which do present a clear and present danger to an institution the state is entitled to protect.

We do not believe that this court has any intention of so extending the rule in the Bridges case. Associated Press v. United States, 89 L. Ed. 1512, text 1515 and 1516.

As to the contention that disclaimer of intent to offend should immunize a newspaper from punishment, the rule is and has been that if the language is unambiguous and if the publication is admitted, then disclaimer of evil intent does not entitle the offenders to discharge.

The language of the editorial and the cartoon, taken together in this case, speak for themselves. The fact that petitioners now make the claim that they were attacking modes of procedure, rather than falsely impunging judicial acts, cannot permit them to deny the plain meaning of their language.

The only question for this Court to decide, is whether the Bridges case, decided upon a different set of facts, in a different state of statutory law, and under entirely different circumstances, should be so extended as to reverse the decision of the state court based upon its own statutes and decisions, where it is undoubtedly true that neither Bridges nor the Times Mirror would have been adjudged guilty on the basis of the facts in this case.

At the outset of the Bridges opinion, it is said:

"The judgments below, therefore, do not come to us encased in the armor wrought by prior legislative deliberation."

Bridges v. State of California (supra) text 261.

We feel that the gist of the Bridges case is found in Section 3 of Judge Black's opinion, in these words:

"We must therefore turn to the particular utterances here in question and the circumstances of their publication to determine to what extent the substantive evil of unfair administration of justice was a likely consequence, and whether the degree of likelihood was sufficient to justify summary punishment."

In affirming the Circuit Court of Dade County, the Supreme Court of the State of Florida found:

"The cartoon and the editorials assimilated, the deduction is inescapable that the circuit judges of Dade County are grabbing at technicalities to free criminals, that the voice of the people is thrown to the discard, that trials are juggled at the behest of the criminal, that the courts are in league with the underworld and will sanction species of sham plea to give it the breaks." (22 So. (2d) 883.)

Earlier, the Court had said:

"If the editorials had stated the facts correctly, nothing but a correct conclusion could have been deducted and there would have been no basis for contempt but here they elected to publish as truth a mixture of factual misstatement and omission and impose on that false insinuation, distortion, and deception and then contend that freedom of the press immunizes them from punishment." (22 So. (2d) 882.)

The facts in the Bridges case are entirely different

from those in this case, and the statutory law of California is entirely different from that of Florida.

The Nye case,[1] which is attempted to be argued in the brief for petitioners, does not hold that contempt is not punishable, but it does hold that contempts outside the courtroom can be punished only by the method of procedure laid down by Federal statute.

In their brief petitioners attempt to argue that none of the cases for which the judges were criticized, was pending at the time of the publication of the editorial and the cartoon, although in their brief in this case before the Florida Supreme Court, page 47 thereof, they made the following statement:

"It was not only unfair but clearly illegal for the judges in their opinion to apply the cartoon to the rape cases. They had not been dismissed but there had simply been an order quashing the indictments which is not a dismissal of the crime charged." Surely, the Florida Court has a right to decide under the law of Florida whether a case is pending at a given time or not, and in this Pennekamp case it held that all of the cases were pending under the procedure in Florida, so that that portion of the argument contained in the brief for petitioners must fall. Certainly they have misread the meaning of the Earman case[2] in Florida. In that decision it was nowhere held that the matter was not a pending one.

In this case we should call the Court's attention to the fact that the whole question is whether the matters published were used in such circumstances and were of such

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[1] Nye vs. United States, 313 U. S. 33.

[2] Exparte Earman 85 Fla. 297 (95 Sou. 755.)

a nature as to create a clear and present danger, that they will bring about the substantive evils that the state has a right to prevent.

If the publication conformed to the rule laid down in the Bridges case, that is, that the substantive evil must be extremely serious and the degree of imminence extremely high before the utterances can be punished, then the procedure is entirely within the control of the state, and, as we have already pointed out, it is recognized by the Hayes case and other decisions extending back one hundred years.

Obviously, we do not contend that without there being shown clear and present danger of bringing about substantive evils the conviction should be affirmed.

On the other hand if there was such clear and present danger, and if it is a substantive evil to bring the courts into disrepute and disrespect by the use of false insinuation, distortion and deception which amounts to charges of unwarranted partisanship and unfairness on the part of the judges, then we submit the conviction should be affirmed.

In most instances when private rights are wrongfully invaded and tresspassed upon a presumption of damages —not mere danger—arises as a matter of law—Damages is more than danger.

When the public institution—its court—while actively engaged in the discharge of its functions of administering justice in a proper manner is falsely and unfairly maligned, is it not a fair inference and deduction that the institution has suffered a clear and present danger from such evil? And is not the temple of justice an institution which the State is entitled to protect?

When the judges of the institution is damaged by libel per se concerning judicial acts can it not be rightfully and naturally assumed that the court then and there suffers danger—and danger from evil acts?

The principle that the State's courts are to be protected from evil dangers is one of necessity developed to preserve and protect this sovereign institution in order that it may more fully serve its purpose.

In that connection, we quote what the Supreme Court of Florida said with regard to the vice in the editorials:

> "So the vice in both the editorials was the distorted, inaccurate statement of the facts and with that statement were scrambled false insinuations that amounted to unwarranted charges of partisanship and unfairness on the part of the judges." (22 So. (2d) 882.)

The fundamental question in this case is whether the procedure of the courts of Florida is subject to regulation by this Court. Mr. Giles J. Patterson has compiled an elaborate digest of the provisions of the Constitutions of the different states with regard to freedom of the press, as of 1908.

In that year only six states in the Union failed to have in the Bill of Rights or the Declaration of Rights, provisions that those enjoying either the right or the liberty of free speech and freedom of the press were responsible for the abuse of the right, or, as phrasd in many of the Constitutions, the abuse of that liberty. That compilation is being attached to this brief as an appendix.

Mr. Patterson has pointed out that of the original thirteen colonies, only Delaware had in its original Con-

stitution a provision that persons enjoying free speech or freedom of the press should be responsible for the abuse of the liberty, but he also points out that an equivalent phrase was contained in the Pennsylvania Constitution of 1792, and that practically all of the states now have such constitutional provisions.

Meaning of Phrases

In a footnote in the Bridges case Mr. Justice Black incorporates the words of James Madison on the subject of the meaning of words in England and in the United States, as follows:

> "To these observations one fact will be added, which demonstrates that the common law cannot be admitted as the universal expositor of American terms, * * . The freedom of conscience and of religion are found in the same instruments which assert the freedom of the press. It will never be admitted that the meaning of the former, in the common law of England, is to limit their meaning in the United States."

Bridges v. State of California (supra) Footnote 10.

The effect of that language is to say that in England the phrase "freedom of the press" had a different meaning from that which it has had in the United States since the Revolution. At the time John Milton was writing on the subject, "freedom of the press" meant the right to print whatever one pleased without previous submission to authority or censorship. Neither there nor here has it ever been held that the words "freedom of the press" should be expanded to mean "immunity of the press" from subsequent punishment.

The meaning of many words has changed from time to

time and from century to century. There is a whole supposedly new science, called "sematics," based upon the change in the meaning of words from time to time. We say supposedly new because there is actually nothing new about it. For hundreds of years our courts have been trying precisely and carefully to define the meaning of words or phrases. Witness the number of volumes of "Words and Phrases" printed within the past forty or fifty years.

The thing which this Court must decide now is whether the press can further expand the meaning of the words "freedom of the press" so that they can print whatever they please, can even "lie about the courts," can bring our whole system under constant attack without any fear whatever of punishment, no matter how false the facts reported, no matter how severe or unjustified their charges against courts may be, and escape scot free upon the ground that any attempt to punish them for anything they might choose to publish would be an infringement upon the right of the freedom of the press.

Mr. Justice Black pointed out in the Bridges case that the right to a fair and impartial trial is fully as fundamental a right as the right of free speech and free press.

We may here call attention to the fact that judges in Florida are elected and for comparatively short terms ranging from four to six years. The Miami Herald is a paper with a week day circulation of more than 125,000. Judges on our benches have only small audiences. They decide 7,000 cases or more a year (in the Circuit Court of Dade County alone,) and many thousands in other courts.

The very editorial here under discussion started out by pointing out to these judges that they had to face the elec-

torate, and then proceeded in the rest of the editorial to accuse them of every wrongdoing possible for a judge. The editorial and the cartoon speak for themselves, but we call attention to two paragraphs of the editorial showing the purpose of The Miami Herald to bring the courts into disrepute after reminding the judges that they had to run for office in a comparatively short time:

> "Every accused person has a right to his day in court. But when judicial instance and interpretative procedure recognize and accept, even go out to find, every possible technicality of the law to protect the defendant, to block, thwart, hinder, embarrass and nullify prosecution, then the people's rights are jeopardized and the basic reason for courts stultified.
>
> "The seeming ease and pat facility with which the criminally charged have been given technical safeguard have set people to wondering whether their courts are being subverted into refuges for lawbreakers." (Tr. 7.)

No matter how much fortitude a life member of the Federal judiciary may have against newspaper attacks, no matter how much he may be willing to ignore them, can it be said that elective judges cannot be intimidated by powerful newspapers? If they can be intimidated, and if the intention of the newspaper to intimidate them is as clear as it is in this case, must it not then follow that such conduct as the petitioners in this case have been guilty of presents a clear and present danger of high imminence to an institution which the state of Florida is entitled to protect?

Do not the constitutional provisions of forty-two of the states which provide that those enjoying freedom of the press shall be responsible for the abuse of that right or that liberty show that the people of the country have

long since recognized that every right carries with it a corresponding responsibility? Can the press claim the right to say whatever it pleases, no matter how false nor how contemptuous, and find a situation in the law where it cannot be punished?

It has been the history of every class or group of men who have lately come to power to undertake to extend and consolidate that power. It has for centuries been the task of the lawyers who speak the English language and of the judges who sit upon English-speaking benches to restrain the abuse of power.

Nobody undertakes to deny the power of press under modern conditions. There are many instances where those who can speak to hundreds of thousands of people a day have undertaken to control the economics, politics, and even the thoughts of the people of this country. If it is a mere matter of opinion on the part of the publisher, then of course he has every right to express it, but he has no right to publish false statements of facts or distorted conclusions based upon misstatements of fact, at least to the extent that he cannot be punished either civilly or criminally for his wrongdoing.

This Court has recently held that even so powerful an institution as the Associated Press[1] is amenable to the laws of the land. If the petitioners in this case are freed from the burden of their wrongdoing, then it is almost impossible to imagine how far they will go in the future, and it is also impossible to imagine how far other more unscrupulous men will go. To give the press an unlimited right to tear down our cherished institutions would undoubtedly mean that we were paving the road

[1] Associated Press vs. United States, 89 Law Ed. 1512.

on which some future American Hitler might ride to power.

Common Law in Florida

In the Supreme Court of the state of Florida[2] it was pointed out that the common law in the original thirteen colonies was theirs at the time of the American Revolution. It was also pointed out that the two Floridas (East and West Florida) were two British colonies east of the Mississippi which did not join in the Revolution but remained English throughout.

Thereafter, they were ceded back to Spain and remained Spanish until purchased by the United States under the Treaty of 1819, the "change of flags" occurring in 1821, so that, when Section 2.01 of the Florida Statutes 1941 was enacted in 1829 it represented a deliberate choice as between the common law of England and the Spanish law on the part of the people of the new territory.

The effect of this statute differs somewhat from the effect of the common law of the thirteen original colonies, because they had their own decisions as a basis. This statute in Florida sets a date (July 4, 1776) and incorporates into the laws of Florida the common and statute laws of England of a general nature in force on that date, provided they are not inconsistent with the Constitution and laws of the United States and the acts of the Legislature of Florida.

Even before that statute was adopted the power of the

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[2] A. L. & D. Co. vs. McRae, 86 Fla. 393, 98 So. 505; Coleman vs. State, 118 Fla. 201, 159 So. 504.

Court to punish for contempt was limited by an act passed in 1828, which is now Section 38.23 of the Florida Statutes of 1941. That limitation has been allowed to stand and the decisions of the courts of Florida have always recognized it.

The restraint used by Florida courts in punishing contempt has been so satisfactory to the people that the power of the courts to punish for different sorts of contempt has been many times enlarged by statute. There has been no attempt to regulate the procedure on the part of the Legislature. All questions of procedure have been decided by the courts. So far from being arbitrary or capricious in the punishment of contempt have our courts always been, that the method of procedure has been allowed to stand unchanged for nearly one hundred and twenty years.

It should not be passed without notice that while this case was pending in the Supreme Court of Florida that the Legislature of Florida was in session, and said Legislature passed and adopted Chapter 23004, Laws of Florida, 1945, amending Section 38.22, Florida Statutes, 1941, extending and enlarging the power of the court in matters of contempts against it.[1]

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[1] Section 38.22, Florida Statutes, 1941, as amended by Chapter 23004, Laws of Florida, 1945:

"38.22 *Power to Punish.* Every Court may punish contempts against it, whether such contempts be direct, indirect, or constructive, and in any such proceeding the Court shall proceed to hear and determine all questions of law and fact, but the punishment imposed by a Justice of the Peace shall not exceed Twenty ($20.00) Dollars fine, or twenty-four (24) hours imprisonment."

No matter what the provisions of the Federal Statute as to procedure, nor the statutory provisions of other states regulating the procedure, that has nothing to do with the power of the people of Florida under their rights as citizens of a sovereign state to keep the method of procedure best adapted to their own needs and their own circumstances.[2]

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[2] Justice Black, who wrote the opinion in the case of Bridges v. California, in his dissenting opinion in the case of International Shoe Company v. Washington, 90 L. Ed. 119, also voiced the fears that the constitutional rights of the states were being unwarrantedly invaded by the Supreme Court of the United States, when he quoted with approval the opinion of Judge Holmes:

"I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the constitutional rights of the States. As the decisions now stand, I see hardly any limit but the sky to the invalidating of those rights if they happen to strike a majority of this Court as for any reason undesirable." Baldwin v. Missouri, 281 U. S. 586, 595, 74 L. Ed. 1056, 1061, 50 S. Ct. 436, 72 A. L. R. 1803.

CONCLUSION

We therefore respectfully urge:

First, that each state is entitled, under our Federal system, to choose its own method of protecting its own institutions.

Second, that the things done by the petitioners in this case were a false, deliberate, willful and planned attack upon the courts of the state and were such as to bring about a clear and present danger of high imminence to an institution the state is entitled to protect.

Third, that, judged by the facts and circumstances peculiar to this case, there is no conflict between the decision of the Supreme Court of Florida in this case and the decision of the Supreme Court of the United States in the Bridges case.

Fourth, that the petitioners are clearly guilty of contempt of court, and, having declined the offer of the citing judges to call in other judges to decide the case, they are not entitled to object to the summary procedure.

Fifth, they made no objection to the mode of procedure at any stage of the case, but, on the contrary, acquiesced in it.

Sixth, that not only were they guilty of contempt of court in the first instance, but their entire attitude since has been defiant and contemptuous, and there has been no attempt to apologize or to right the wrong intentionally done, and, on the contrary, they have said that the actions of the judges, all of which were approved by the Supreme Court of Florida, would have justified even stronger criticism.

Seventh, a reversal of this case would enlarge the meaning of the phrase "freedom of the press" so that it would hereafter mean "immunity of the press" from punishment for all of its willful, deliberate, false and intentional abuse of the courts or other of our time-tried institutions.

It is therefore respectfully submitted that the decision of the Supreme Court of Florida should be affirmed.

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APPENDIX

CONSTITUTIONAL PROVISIONS OF STATES RELATING TO FREEDOM OF SPEECH AND OF THE PRESS.

ALABAMA

1819 Art. 1, Sec. 8

"Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

1865 Art. 1, Sec. 5 Same
1867 Art. 1, Sec. 6 Same
1875 Art. 1, Sec. 5 Same
1901 Art. 1, Sec. 4

"that no law shall ever be passed to curtail or restrain the liberty of speech or of the press and that a person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

ARKANSAS

1836 Art. 2, Sec. 7

"that printing presses shall be free to every person; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write and print on any subject—being responsible for the abuse of that liberty."

1864 Art. 2, Sec. 7 Same
1868 Art. 1, Sec. 2

"The liberty of the press shall forever remain inviolate. The free communication of thoughts and opinions is one of the invaluable rights of man and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right."

CALIFORNIA

1849 Art. 1, Sec. IX

"Every citizen may freely speak, write and publish his sentiments on all subjects being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech and of the press."

1879 Same

COLORADO

1876 Art. 2, Sec. 10

"That no law shall be passed impairing the freedom of speech; that every person shall be free to speak, write and publish whatever he will on any subject, being responsible for the abuse of that liberty."

CONNECTICUT

1818 Art. 1, Sec. 5

"Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

Sec. 6

"No law shall ever be passed to curtail or restrain the liberty of speech and of the press."

DELAWARE

1792 Art. 1, Sec. 5

"The press shall be free to every citizen who undertakes to examine the official conduct of men acting in a public capacity; and any citizen may print on any subject being responsible for the abuse of that liberty."

1831 Art. 1, Sec. 5 Same

1897 Art. 1, Sec. 5 Same

FLORIDA

1838 Art. 1, Sec. 5

"That every citizen may freely speak, write, and publish his sentiments, on all subjects, being respon-

sible for the abuse of that liberty; and no law shall ever be passed to curtail, abridge, or restrain the liberty of speech and of the press."

1865 Art. 1, Sec. 5 Same

1868 Art. 1, Sec. 10 Same

1885 Declaration of Rights, Sec. 13 Same

GEORGIA

1777 Art. LXI

"Freedom of the press and trial by jury to remain inviolate forever."

1789 No Bill of Rights

1798 Art. 4, Sec. 5

"Freedom of the press and trial by jury, as heretofore used in this state, shall remain inviolate."

1865 Art. 1, Sec. 6

"Freedom of speech and printing of the press, are inherent elements of political liberty. But while every citizen may freely speak or write or print on any subject he shall be responsible for the abuse of the liberty."

1868 Art. 1, Sec. 9 Same

1877 Paragraph XV

"No law shall ever be passed to curtail, or restrain, the liberty of speech, or of the press; any person may speak, write, and publish his sentiments, on all subjects, being responsible for the abuse of that liberty."

IDAHO

1889 Art. 1, Sec. 9

"Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty."

ILLINOIS

1818 Art. 8, Sec. 22

"The printing presses shall be free to every person who undertakes to examine the proceedings of the general assembly or of any branch of Government; and no law shall ever be made to restrain the right

thereof. The free communication of thoughts and opinions is one of the invaluable rights of man and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty."

1870 Art. 2, Sec. 4

"Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty."

INDIANA

1816 Art. 1, Sec. 9 Identical with Illinois 1818

1851 Art. 1, Sec. 9

"No law shall be passed restraining the free interchange of thought and opinion, or restricting the right to speak, write or print, freely, on any subject whatever; but for the abuse of that right every person shall be responsible."

IOWA

1846 Art. 1, Sec. 7

"Every person may speak, write and publish his sentiments on all subjects being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press."

1857 Art. 1, Sec. 7 Same

KANSAS

1855 Art. 1, Sec. 11

"Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech or of the press."

1857 Art. 15, Bill of Rights, Sec. 7

"Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right."

1858 Art. 1, Sec. 11

"Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press."

1859 Sec. 11

"The liberty of the press shall be inviolate; and all persons may freely speak, write, or publish their sentiments on all subjects, being responsible for the abuse of that right."

KENTUCKY

1792 Art. 12, Sec. 7

"That the printing presses shall be free to every person who undertakes to examine the proceedings of the Legislature or any branch of the Government and no law shall ever be made to restrain the right thereof. The free communications of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty."

1799 Art. 10, Sec. 7 Same

1850 Art. 13, Sec. 9 Same

1890 Bill of Rights, Sec. 8, Same

LOUISIANA

1812 Art. 6, Sec. 21

"That the printing presses shall be free to every person who undertakes to examine the proceedings of the Legislature or any branch of the Government and no law shall ever be made to restrain the right thereof. The free communications of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty."

1845 Art. 110

"The press shall be free. Every citizen may freely

speak, write, and publish his sentiments on all subjects; being responsible for an abuse of this liberty."

1852 Art. 106 Same

1864 No Bill of Rights

1868 Title 1, Art. 4

"The press shall be free; every citizen may freely speak, write and publish his sentiments on all subjects being responsible for an abuse of this liberty."

1879 Art. 4

"No law shall be passed respecting an establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech, or of the press."

1898 Art. 3

"No law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of this liberty."

MAINE

1819 Art. 1, Sec. 4

"Every citizen may freely speak, write and publish his sentiments on any subject, being responsible for the abuse of this liberty; no laws shall be passed regulating or restraining freedom of the press."

MARYLAND

1776 Sec. XXXVIII

"That the liberty of the press ought to be inviolably preserved."

1851 Declaration of Rights, Sec. 38 Same

1864 Art. 40

"That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write or publish, his sentiments on all subjects being responsible for the abuse of that liberty."

1867 Art. 40 Same

MASSACHUSETTS

1780 Part of first Art. XVI

"The liberty of the press is essential to the security of freedom in a state; it ought not, therefore, to be restrained in this commonwealth."

MICHIGAN

1835 Art. 1, Sec. 7

"Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no laws shall be passed to restrain or abridge the liberty of speech or of the press."

1850 Art. 4, Sec. 42

"No laws shall be passed to restrain or abridge the liberty of speech or of the press. Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right."

MINNESOTA

1857 Art. 1 Sec. 3

"The liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right."

MISSISSIPPI

1817 Art. 1, Sec. 6

"Every citizen may freely speak, write or publish his sentiments on all subjects, being responsible for the abuse of that liberty."

Sec. 7. "No law shall ever be passed to curtail or restrain the liberty of speech or of the press."

1832 Same as Art. 1, Secs. 6 and 7

1868 Art. 1, Sec. 4

"The freedom of speech and of the press shall be sacred."

1890 Art. 3, Sec. 13

"The freedom of speech and of the press shall be sacred."

MISSOURI

1829 Art. 13, Sec. 16

"that the free communication of thoughts and opinions is one of the invaluable rights of man, and that every person may freely speak, write and print on any subject, being responsible for the abuse of that liberty."

1865 Art. 1, Sec. 27 Same

1875 Art. 2, Sec. 14

"that no law shall be passed impairing the freedom of speech; that every person shall be free to say, write or publish whatever he will on any subject, being responsible for all abuse of that liberty."

MONTANA

1889 Art. 2, Sec. 10

"No law shall be passed impairing the freedom of speech; every person shall be free to speak, write or publish whatever he will on any subject, being responsible for the abuse of that liberty."

NEBRASKA

1866 Art. 1, Sec. 3

"Every person may freely speak, write or publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press."

1875 Art. 1, Sec. 5

"Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty."

NEVADA

1864 Art. 1, Sec. 9

"Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech and of the press."

NEW HAMPSHIRE

1784 Art. 1, Sec. XXII

"The liberty of the press is essential to the security of freedom in a state; it ought, therefore, to be inviolably preserved."

1792 Part First Art. XXII Same

1902 Part First Sec. 22 Same

NEW JERSEY

1776 No reference

1844 Art. 1, Sec. 5

"Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press."

NEW YORK

1777 No reference

1821 Art. 7, Sec. 8

"Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press."

1846 Art. 1, Sec. 8 Same

1894 Art. 1, Sec. 8 Same

NORTH CAROLINA

1776 Declaration of Rights, Sec. XV

"that the freedom of the press is one of the greatest bulwarks of liberty and, therefore, ought never to be restrained."

1868 Art. 1, Sec. 20

Same as 1776 except it adds "but every individual should be held responsible for the abuse of the same."

1876 Art. 1, Sec. 20 Same as 1868

NORTH DAKOTA

1889 Art. 1, Sec. 9

"Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege."

OHIO

1802 Art. 8, Sec. 6

"that the printing presses shall be open and free to every citizen who wishes to examine the proceedings of any branch of Government, or the conduct of any public officer; and no law shall ever restrain the right thereof. Every citizen has an indisputable right to speak, write or print, upon any subject as he considers proper, being liable for the abuse of that liberty."

1851 Art. 1, Sec. 11

"Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech or of the press."

OREGON

1857 Art. 1, Sec. 8

"No law shall be passed restraining the free expression of opinion or restricting the right to speak, write, or print freely on any subject whatever, but every person shall be responsible for the abuse of this right."

PENNSYLVANIA

1776 Declaration of Rights, Sec. XII

"that the people have a right to freedom of speech and of writing, publishing their sentiments; therefore, the freedom of the press ought not to be restrained."

1776 Plan of Government, Sec. 35

"The printing presses shall be free to every person who undertakes to examine proceedings of the Legislature or any part of the government."

1790 Art. 9, Sec. 7

"That the printing presses shall be free to every person who undertakes to examine the proceedings of the Legislature or any branch of the Government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty."

1838 Art. 9, Sec. 7 Same

1873 Art. 1, Sec. 7 Same

RHODE ISLAND

1842 Art. 1, Sec. 20

"The liberty of the press being essential to the security of freedom in a state, any person may publish his sentiments on any subject, being responsible for the abuse of that liberty."

SOUTH CAROLINA

1776 No Bill of Rights

1778 Sec. XLIII

"that the liberty of the press be inviolably preserved."

1790 No reference

1865 No reference

1868 Art. 1, Sec. 7

"All persons may freely speak, write and publish their sentiments on any subject, being responsible for the abuse of that right; and no laws shall be enacted to restrain or abridge the liberty of speech or of the press."

1895 Art. 1, Sec. 4

"The General Assembly shall make no law respecting the establishment of religion or prohibiting its free exercise thereof, or abridging the freedom of speech or of the press."

SOUTH DAKOTA

1889 Art. 6, Sec. 5

"Every person may freely speak, write or publish on all subjects, being responsible for the abuse of that right."

TENNESSEE

1796 Art. 11, Sec. 19

"that the printing presses shall be free to every person, who undertakes to examine the proceedings of the Legislature or of any branch or officer of the Government; and no law shall ever be made to restrain the rights thereof. Free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty."

1834 Art. 1, Sec. 19 Same

1870 Art. 1, Sec. 19 Same

TEXAS

1845 Art. 1, Sec. 5

"Every citizen shall have the liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press."

1866 Art. 1, Sec. 5 Same

1868 Art. 1, Sec. 5 Same

1876 Art. 1, Sec. 8 Same

UTAH

1895 Art. 1, Sec. 15

"No law shall be passed to abridge or restrain the freedom of speech or of the press."

VERMONT

Chapter 1, Sec. XIV

"that the people have a right to freedom of speech and of writing and publishing their sentiments;

therefore, the freedom of the press ought not to be restrained."

1786 Chapter 1, Sec. XV

"that the people have a right of freedom of speech and of writing and publishing their sentiments concerning the transactions of the Government—and, therefore, the freedom of the press ought not to be restrained."

1793 Chapter 1, Art. 13 Same

VIRGINIA

1776 Bill of Rights, Sec. 12

"that the freedom of the press is one of the greatest bulwarks of liberty and can never be restrained but by despotic governments."

1830 Art. 1 Reaffirms Declaration of Rights of 1776

1850 Bill of Rights Sec. XII Same

1864 Art. 1, Sec. 14

Same as earlier Constitutions except there is added: "and any citizen may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

1902 Art. 1, Sec. 12—Same as 1864

WASHINGTON

1889 Art. 1, Sec. 5

"Every person may freely speak, write or publish on all subjects, being responsible for the abuse of that right."

WEST VIRGINIA

1861 Art. 2, Sec. 4

"No law abridging freedom of speech or of the press shall be passed; but the Legislature may provide for the restraint and punishment of the publishing, vending and printing of obscene books, papers, and pictures and of libel and defamation of character, and for the recovery in civil actions, by the aggrieved party for suitable damages for such libel or defamation. Attempts to justify or to uphold an

armed invasion of the State or an organized insurrection therein, during the continuance of such invasion or insurrection by publicly speaking, writing or printing, or by publishing of circulars, such writing or printing, may be, by law, declared a misdemeanor and punished accordingly."

1872 Art. 3, Sec. 7—Same as 1861, but omitting sentence beginning "attempts to justify armed invasion * *"

WISCONSIN

1848 Art. 1, Sec. 3

"Every person may freely speak, write or publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press."

WYOMING

1889 Art. 1, Sec. 20

"Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right."